

DEPARTMENT OF SOCIAL SERVICES

1000 P Street, M.S. 19-31  
Sacramento, CA 95814

December 30, 1983



ALL-COUNTY LETTER NO. 83-131

TO: All Public and Private Adoption Agencies  
All SDSS Adoption District Offices

SUBJECT: Surrogate Parenting

REFERENCE:

This letter is to inform you of policy and procedures related to inquiries or case referrals on surrogate parenting.

For the purposes of definition, surrogate parenting entails a situation in which the woman 1) agrees to be artificially inseminated with semen from a man not her husband and 2) agrees to release the child so conceived to the man and his wife after the child's birth.

As you are aware, there is currently no legislation to govern the various facets of surrogate parenting or to protect the interests of the parties involved. A primary concern of surrogate parenting is the welfare of the child. The child's interests can best be protected by assuring 1) an independent or stepparent adoption petition is filed, 2) a subsequent home study is conducted and 3) background information, including health history of both parents, is obtained and recorded.

Whether a petition is filed for an independent or a stepparent adoption depends upon the action taken, if any, by the semen donor to establish his paternity of the child. Section 7005(b) of the Civil Code reads, in pertinent part, as follows: "... the donor of semen provided to a licensed physician for use in artificial insemination of a woman other than the donor's wife is treated in law as if he were not the natural father of a child thereby conceived."

It is the Department's opinion based upon Section 7005(b), and in the absence of any other pertinent statute, that the sperm donor in a surrogate parenting arrangement should not be regarded as the natural father of a child unless he has established his paternity in court. If his paternity has not been established, the couple who have contracted with a surrogate mother should be advised that an independent adoption petition should be filed upon the birth of the child. If, on the other hand, the sperm donor has established in court that he is the father of the child, a petition should be filed for a stepparent adoption.

In either type of adoption, independent or stepparent, consent of the surrogate (birth) mother must be obtained after the birth of the child. If the surrogate mother is married, her husband's consent must also be obtained unless the husband has established in court that he is not the father of the child per Section 7006(a)(2) of the Civil Code or Section 621 of the Evidence Code.

There are many other legal problems surrounding the issue of surrogate parenting such as validity of contracts and payments to the surrogate mother. These problems can only be resolved through the courts or through future legislation.

If you have any questions about this letter, please contact the Adoptions Policy Unit at (916) 445-9124.



LOREN D. SUTER  
Deputy Director  
Adult and Family Services Division

cc: CWDA